

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-221896

**DATE:** May 28, 1986

**MATTER OF:** Monroe Wire & Cable Co.

**DIGEST:**

1. Telegraphic bid modification which is time/date stamped by the procuring activity 33 minutes after bid opening is properly rejected as late, notwithstanding information from Western Union purporting to show that it was transmitted and received before bid opening, since the only acceptable evidence to establish timely receipt is the government's time/date stamp. Information provided by Western Union may not be used to establish time of receipt or inaccuracy of time/date stamp.
2. Where bidder allegedly transmits modification lowering bid price by Western Union telex at 2:19 p.m. on the day of a 2:30 p.m. bid opening, late receipt is due to the bidder's failure to allow sufficient time for delivery, rather than to mishandling in the process of receipt. Agency properly did not consider the modification.

Monroe Wire & Cable Co. (Monroe) protests the rejection of its telegraphic bid modification as late under solicitation No. DAAB07-86-B-0045 for field wire, issued by the United States Army Communications-Electronics Command (Army).

We deny the protest.

Bid opening occurred on January 14, 1986, at 2:30 p.m. The solicitation authorized telegraphic bids and bid modifications and provided instructions regarding the transmission of same. Monroe submitted a bid on January 10 and subsequently submitted a bid modification reducing its prices by

Western Union telex. This telex was time/date stamped by the Army mailroom at 3:03 p.m. on January 14; it was not received by the contracting officer until 9:10 a.m. the next morning. The contracting officer considered Monroe's bid without regard to the late modification. Monroe's telegraphic price modification would have made its bid low on all line items.

Monroe contends that Western Union records conclusively establish that its telexed modification was directly transmitted by Western Union at 2:19 p.m. and simultaneously received on the Army TWX machine in its mailroom at this time. In addition, Monroe points out that the contracting officer was on notice that the modification would arrive because he had been so advised by telephone call from Monroe at 12:30 p.m. Thus, Monroe believes that the contracting officer was obligated to check the mailroom immediately prior to bid opening to establish whether the modification had been received. Monroe contends that the telex was mishandled by the government which resulted in its being received late. We disagree.

As a general rule, the only acceptable evidence to establish the time of receipt of a bid or modification at a government installation is the time/date stamp of the installation or other documentary evidence of receipt maintained by the installation. Federal Acquisition Regulation, 48 C.F.R. § 14.304-1(c) (1984); R.M.B. Products, B-218594, June 26, 1985, 85-1 C.P.D. ¶ 728; Alaska Media Productions, B-218777, Apr. 18, 1985, 85-1 C.P.D. ¶ 446. Accordingly, we have held that information from Western Union to establish the time of receipt of a telex is unacceptable. Allied Electric Inc., B-216548, Mar. 12, 1985, 85-1 C.P.D. ¶ 304; United Terex, Inc., B-209462, Feb. 28, 1983, 83-1 C.P.D. ¶ 198; Cecile Industries, Inc., B-209796, July 7, 1982, 82-2 C.P.D. ¶ 29. Rather, the installation time/date stamp, which here evidences receipt in the mailroom after the time for bid opening, controls and eliminates Monroe's modification from consideration.

There is a narrow exception to this rule where it can be established that government mishandling in the process of receipt was the paramount cause for late receipt or nonreceipt at the installation, in which case timely receipt may be established by reference to other reliable evidence not

within the bidder's control. The Standard Products Co., B-215832, Jan. 23, 1985, 85-1 C.P.D. ¶ 86. The protester has cited this case and several others in which we relaxed the rule with respect to telegraphically transmitted submissions, because we concluded that government mishandling during the process of receipt was the paramount cause of lateness. However, these cases involve the malfunctioning or nonfunctioning of an agency's telex machine and where, as here, the agency's telex machine is functional, the situation does not fall within the purview of this exception. Hargis Construction, Inc., B-221979, May 6, 1986, 86-1 C.P.D. ¶ \_\_\_\_.

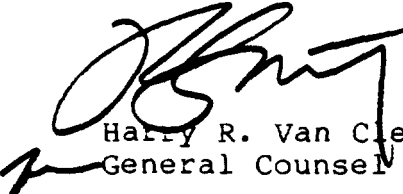
In addition, in order to consider the question of mishandling, it is necessary to establish the actual time of receipt. Here, an Army mailroom employee has stated that normal agency procedure involves monitoring of the TWX machine on an as-required basis by the two mailroom employees, along with the conduct of their other activities. He indicates that the TWX transmission is audible, and there is no more than a 10-minute delay between the receipt of the transmission and the hand-stamping of the time/date stamp. We have sanctioned the use of such procedures and held that the failure of an agency to utilize an automatic stamping device on incoming TWX machines does not shift the bidder's responsibility to assure timely arrival of a bid or bid modification to the government. X-Tyal International Corp., B-202434, Jan. 7, 1982, 82-1 C.P.D. ¶ 19. Thus, the 3:03 p.m. time/date stamp is conclusive evidence of the time of receipt.

By contrast, the Western Union evidence does not establish the time of receipt of the bid modification. We have explicitly held that Western Union's explanation of the necessity of simultaneous transmission and receipt of a "direct" telex is insufficient to establish the time of receipt of such a telex by an agency. United Terex Inc., B-209462, supra.

Finally, it appears that the paramount cause for the late receipt was Monroe's failure to send the modification until very shortly (11 minutes) prior to bid opening. Even if it had arrived at the mailroom at 2:19 p.m., it was not reasonable for Monroe to assume that the telex would be delivered to the room designated for receipt of bids within 11 minutes, or that the contracting officer would have discovered it if he had checked the mailroom 15 minutes

before bid opening as is reportedly the usual procedure.  
See Delta Lighting Corp., B-219649, Oct. 30, 1985, 85-2  
C.P.D. ¶ 491.

The protest is denied.



Harry R. Van Cleave  
General Counsel